

# House Amendment 1492

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1 1 Amend the amendment, H=1150, to House File 712, as  
1 2 follows:  
1 3 #1. By striking page 1, line 1, through page 6,  
1 4 line 16, and inserting the following:  
1 5 <Amend House File 712 as follows:  
1 6 #. By striking everything after the enacting  
1 7 clause and inserting the following:  
1 8 <Section 1. NEW SECTION. 714H.1 TITLE.  
1 9 This chapter shall be known and may be cited as the  
1 10 "Private Right of Action for Consumer Frauds Act".  
1 11 Sec. 2. NEW SECTION. 714H.2 DEFINITIONS.  
1 12 1. "Actual damages" means all economic damages  
1 13 proximately caused by the prohibited practice or act  
1 14 that are reasonably ascertainable in amount.  
1 15 2. "Advertisement" means the same as defined in  
1 16 section 714.16.  
1 17 3. "Consumer" means a natural person or the  
1 18 person's legal representative.  
1 19 4. "Consumer merchandise" means merchandise  
1 20 offered for sale or lease, or sold or leased,  
1 21 primarily for personal, family, or household purposes.  
1 22 5. "Deception" means an act or practice that is  
1 23 likely to mislead a substantial number of consumers as  
1 24 to a material fact or facts.  
1 25 6. "Merchandise" means the same as defined in  
1 26 section 714.16.  
1 27 7. "Person" means the same as defined in section  
1 28 714.16.  
1 29 8. "Sale" means any sale or offer for sale of  
1 30 consumer merchandise for cash or credit.  
1 31 9. "Unfair practice" means the same as defined in  
1 32 section 714.16.  
1 33 Sec. 3. NEW SECTION. 714H.3 PROHIBITED PRACTICES  
1 34 AND ACTS.  
1 35 1. A person shall not engage in a practice or act  
1 36 the person knows or reasonably should know is an  
1 37 unfair practice, deception, fraud, false pretense, or  
1 38 false promise, or the misrepresentation, concealment,  
1 39 suppression, or omission of a material fact, with the  
1 40 intent that others rely upon the unfair practice,  
1 41 deception, fraud, false pretense, false promise,  
1 42 misrepresentation, concealment, suppression, or  
1 43 omission in connection with the advertisement, sale,  
1 44 or lease of consumer merchandise, or the solicitation  
1 45 of contributions for charitable purposes. For the  
1 46 purposes of this chapter, a claimant alleging an  
1 47 unfair practice, deception, fraud, false pretense,  
1 48 false promise, or misrepresentation must prove that  
1 49 the prohibited practice related to a material fact or  
1 50 facts. "Solicitations of contributions for charitable  
2 1 purposes" does not include solicitations made on  
2 2 behalf of a political organization as defined in  
2 3 section 13C.1, solicitations made on behalf of a  
2 4 religious organization as defined in section 13C.1,  
2 5 solicitations made on behalf of a state, regionally,  
2 6 or nationally accredited college or university, or  
2 7 solicitations made on behalf of a nonprofit foundation  
2 8 benefiting a state, regionally, or nationally  
2 9 accredited college or university subject to section  
2 10 509(a)(1) or 509(a)(3) of the Internal Revenue Code of  
2 11 1986.  
2 12 2. A person shall not engage in any practice or  
2 13 act that is in violation of any of the following:  
2 14 a. Section 321.69.  
2 15 b. Chapter 516D.  
2 16 c. Section 516E.5, 516E.9, or 516E.10.  
2 17 d. Chapter 555A.  
2 18 e. Section 714.16, subsection 2, paragraphs "b"  
2 19 through "n".  
2 20 f. Chapter 714A.  
2 21 Sec. 4. NEW SECTION. 714H.4 EXCLUSIONS.  
2 22 1. This chapter shall not apply to any of the  
2 23 following:  
2 24 a. Merchandise offered or provided by any of the

2 25 following persons, including business entities  
2 26 organized under Title XII by those persons and the  
2 27 officers, directors, employees, and agents of those  
2 28 persons or business entities, pursuant to a profession  
2 29 or business for which they are licensed or registered:  
2 30 (1) Insurance companies subject to Title XIII.  
2 31 (2) Attorneys licensed to practice law in this  
2 32 state.  
2 33 (3) Financial institutions which includes any bank  
2 34 incorporated under the provisions of any state or  
2 35 federal law, any savings and loan association or  
2 36 savings bank incorporated under the provisions of any  
2 37 state or federal law, any credit union organized under  
2 38 the provisions of any state or federal law, and any  
2 39 affiliate or subsidiary of a bank, savings and loan  
2 40 association, savings bank, or credit union, and any  
2 41 industrial loan licensee under chapter 536A or  
2 42 regulated loan licensee under chapter 536.  
2 43 (4) Persons or facilities licensed, certified, or  
2 44 registered under chapters 135B, 135C, 135J, 148, 148A,  
2 45 148B, 148C, 149, 151, 152, 152A, 152B, 153, 154, 154B,  
2 46 154C, 154D, 155A, 156, 169, 522B, 542, 542B, 543B,  
2 47 544A, or 544B.  
2 48 b. Advertising by a retailer for a product, other  
2 49 than a drug or other product claiming to have a  
2 50 health-related benefit or use, if the advertising is  
3 1 prepared by a supplier, unless the retailer  
3 2 participated in the preparation of the advertisement  
3 3 or knew or should have known that the advertisement  
3 4 was deceptive, false, or misleading.  
3 5 c. In connection with an advertisement that  
3 6 violates this chapter, the newspaper, magazine,  
3 7 publication, or other print media in which the  
3 8 advertisement appears, including the publisher of the  
3 9 newspaper, magazine, publication, or other print media  
3 10 in which the advertisement appears, or the radio  
3 11 station, television station, or other electronic media  
3 12 which disseminates the advertisement, including an  
3 13 employee, agent, or representative of the publisher,  
3 14 newspaper, magazine, publication or other print media,  
3 15 or the radio station, television station, or other  
3 16 electronic media.  
3 17 d. Any advertisement that complies with the  
3 18 statutes, rules, and regulations of the federal trade  
3 19 commission.  
3 20 e. The provision of local exchange carrier  
3 21 telephone service pursuant to a certificate issued  
3 22 under section 476.29.  
3 23 f. Public utilities as defined in section 476.1  
3 24 that furnish gas by a piped distribution system or  
3 25 electricity to the public for compensation.  
3 26 g. The provision of cable television service or  
3 27 video service pursuant to a franchise under section  
3 28 364.2 or 477A.2.  
3 29 h. Conduct in compliance with the orders or rules  
3 30 of, or a statute administered by, a federal, state, or  
3 31 local governmental agency.  
3 32 i. Actions alleging bodily injury.  
3 33 j. In any action relating to a charitable  
3 34 solicitation, an individual who has engaged in the  
3 35 charitable solicitation as an unpaid, uncompensated  
3 36 volunteer and who does not receive monetary gain of  
3 37 any sort from engaging in the solicitation.  
3 38 k. An affirmative act that violates this chapter  
3 39 but is specifically required by other applicable law,  
3 40 to the extent that the actor could not reasonably  
3 41 avoid a violation of this chapter.  
3 42 2. "Material fact" as used in this chapter does  
3 43 not include repairs of damage to, adjustments on, or  
3 44 replacements of parts with new parts of otherwise new  
3 45 merchandise if the repairs, adjustments, or  
3 46 replacements are made to achieve compliance with  
3 47 factory specifications and are made before sale of the  
3 48 merchandise at retail and the actual cost of any labor  
3 49 and parts charged to or performed by a retailer for  
3 50 any such repairs, adjustments, and parts does not  
4 1 exceed three hundred dollars or ten percent of the  
4 2 actual cost to a retailer including freight of the  
4 3 merchandise, whichever is less, provided that the  
4 4 seller posts in a conspicuous place notice that  
4 5 repairs, adjustments, or replacements will be

4 6 disclosed upon request. The exclusion provided in  
4 7 this subsection does not apply to the concealment,  
4 8 suppression, or omission of a material fact if the  
4 9 purchaser requests disclosure of any repair,  
4 10 adjustment, or replacement.

4 11 Sec. 5. NEW SECTION. 714H.5 PRIVATE RIGHT OF  
4 12 ACTION.

4 13 1. A consumer who suffers an ascertainable loss of  
4 14 money or property as the result of such prohibited  
4 15 practice or act may bring an action at law to recover  
4 16 actual damages. The court may order such equitable  
4 17 relief as it deems necessary to protect the public  
4 18 from further violations, including temporary and  
4 19 permanent injunctive relief.

4 20 2. If the court finds that a person has violated  
4 21 this chapter and the consumer is awarded actual  
4 22 damages, the court shall award to the consumer the  
4 23 costs of the action and to the consumer's attorney  
4 24 reasonable fees. Reasonable attorney fees shall be  
4 25 determined by the value of the time reasonably  
4 26 expended by the attorney including but not limited to  
4 27 consideration of the following factors:

4 28 a. The time and labor required.  
4 29 b. The novelty and difficulty of the issues in the  
4 30 case.

4 31 c. The skills required to perform the legal  
4 32 services properly.

4 33 d. The preclusion of other employment by the  
4 34 attorney due to the attorney's acceptance of the case.

4 35 e. The customary fee.

4 36 f. Whether the fee is fixed or contingent.

4 37 g. The time limitations imposed by the client or  
4 38 the circumstances of the case.

4 39 h. The amount of money involved in the case and  
4 40 the results obtained.

4 41 i. The experience, reputation, and ability of the  
4 42 attorney.

4 43 j. The undesirability of the case.

4 44 k. The nature and length of the professional  
4 45 relationship between the attorney and the client.

4 46 l. Attorney fee awards in similar cases.

4 47 3. In order to recover damages, a claim under this  
4 48 section shall be proved by a preponderance of the  
4 49 evidence.

4 50 4. If the finder of fact finds by a preponderance  
5 1 of clear, convincing, and satisfactory evidence that a  
5 2 prohibited practice or act in violation of this  
5 3 chapter constitutes willful and wanton disregard for  
5 4 the rights or safety of another, in addition to an  
5 5 award of actual damages, statutory damages up to three  
5 6 times the amount of actual damages may be awarded to a  
5 7 prevailing consumer.

5 8 5. An action pursuant to this chapter must be  
5 9 brought within two years of the occurrence of the last  
5 10 event giving rise to the cause of action under this  
5 11 chapter or within two years of the discovery of the  
5 12 violation of this chapter by the person bringing the  
5 13 action, whichever is later.

5 14 6. This section shall not affect a consumer's  
5 15 right to seek relief under any other theory of law.

5 16 Sec. 6. NEW SECTION. 714H.6 ATTORNEY GENERAL  
5 17 NOTIFICATION.

5 18 1. A party filing a petition, counterclaim,  
5 19 cross-petition, or pleading, or any count thereof, in  
5 20 intervention alleging a violation under this chapter,  
5 21 within seven days following the date of filing such  
5 22 pleading, shall provide a copy to the attorney general  
5 23 and, within seven days following entry of any final  
5 24 judgment in the action, shall provide a copy of the  
5 25 judgment to the attorney general.

5 26 2. A party appealing to district court a small  
5 27 claims order or judgment involving an issue raised  
5 28 under this chapter, within seven days of providing  
5 29 notice of the appeal, shall notify the attorney  
5 30 general in writing and provide a copy of the pleading  
5 31 raising the issue and a copy of the small claims court  
5 32 order or judgment.

5 33 3. A party appealing an order or judgment  
5 34 involving an issue raised under this chapter, within  
5 35 seven days following the date such notice of appeal is  
5 36 filed with the court, shall notify the attorney

5 37 general in writing and provide a copy of the pleading  
5 38 raising the issue and a copy of the court order or  
5 39 judgment being appealed.  
5 40 4. Upon timely application to the court in which  
5 41 an action involving an issue raised under this chapter  
5 42 is pending, the attorney general may intervene as a  
5 43 party at any time or may be heard at any time. The  
5 44 attorney general's failure to intervene shall not  
5 45 preclude the attorney general from bringing a separate  
5 46 enforcement action.  
5 47 5. All copies of pleadings, orders, judgments, and  
5 48 notices required by this section to be sent to the  
5 49 attorney general shall be sent by certified mail  
5 50 unless the attorney general has previously been  
6 1 provided such copies of pleadings, orders, judgments,  
6 2 or notices in the same action by certified mail, in  
6 3 which case subsequent mailings may be made by regular  
6 4 mail. Failure to provide the required mailings to the  
6 5 attorney general shall not be grounds for dismissal of  
6 6 an action under this chapter, but shall be grounds for  
6 7 a subsequent action by the attorney general to vacate  
6 8 or modify the judgment.  
6 9 Sec. 7. NEW SECTION. 714H.7 CLASS ACTIONS  
6 10 BARRED.  
6 11 A class action lawsuit alleging violations of this  
6 12 chapter shall not be available. Nothing in this  
6 13 chapter shall be construed to limit the attorney  
6 14 general from bringing a class action lawsuit pursuant  
6 15 to section 714.16.  
6 16 Sec. 8. NEW SECTION. 714H.8 SEVERABILITY CLAUSE.  
6 17 If any provision of this chapter or its application  
6 18 to any person or circumstances is held invalid, the  
6 19 invalidity does not affect other provisions or  
6 20 applications of this chapter that can be given effect  
6 21 without the invalid provision or application, and to  
6 22 this end the provisions of this chapter are severable.  
6 23 Sec. 9. APPLICABILITY. This Act applies to causes  
6 24 of actions accruing on or after the effective date of  
6 25 this Act.>  
6 26 #\_\_\_\_. Title page, line 1, by striking the word  
6 27 <cause> and inserting the following: <right>.  
6 28 #\_\_\_\_. Title page, line 2, by striking the word  
6 29 <providing> and inserting the following:  
6 30 <including>.>  
6 31  
6 32  
6 33  
6 34 STRUYK of Pottawattamie  
6 35 HF 712.506 83  
6 36 rh/rj/22680